

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LAURA FAUGHT and STEVEN
FAUGHT,

Plaintiffs,

v.

AMERICAN HOME SHIELD
CORPORATION,

Defendant.

Case No. 2:07CV1928:RDP

**DECLARATION OF JOHN W.
DAVIS IN SUPPORT OF
OBJECTING CLASS MEMBERS'
APPLICATION FOR AN AWARD
OF ATTORNEY'S FEES AND
COSTS**

I, John W. Davis, affirm the following:

1. I am a member in good standing of the State Bars of California and Florida. I have been admitted to practice before this Court *pro hac vice*, and am counsel for Miriam and John Chapon (“Objectors”) in this matter. I am submitting this declaration in support of my firm’s application for an award of attorney’s fees for services rendered in the above-captioned matter, and for reimbursement of expenses reasonably incurred in connection with this litigation. The following statements are based on my personal knowledge and the files and records in this case of which I am aware and, if called on to do so, I could and would testify competently thereto.

2. I am the owner of the Law Office of John W. Davis. While my firm devoted its time and resources to this matter, it has foregone other legal work for which it would have been compensated either on an hourly basis, a negotiated contingency basis, or by a court-awarded fee.

3. Attached hereto as **Exhibit A** is a true and correct copy of my contemporaneous time records up until the date of entry of judgment.

4. As reflected in the attached time records, I billed 94.5 hours on this matter for handling tasks which took place up to and including entry of judgment. I have not included hours spent on tasks subsequent to entry of judgment. My current hourly rate is \$475. My lodestar totals: \$44,887.50. Given the time delay, I believe an award of fees at my current hourly rate is appropriate. *See, e.g., Anderson v. Director, Office of Workers Comp. Programs*, 91 F.3d 1322 (9th Cir. 1996). No hours have been included in this lodestar that were incurred in the review of the firm’s time entries, or in the drafting of this declaration.

5. In addition to the hours described above, my firm has incurred \$1,138.57 in unreimbursed expenses. These expenses are detailed in Exhibit A attached hereto.

6. My firm's contemporaneous records are maintained as part of my regular business practice and are reviewed daily for accuracy. Prior to preparation of this declaration I again reviewed my records for accuracy and compared the work performed with my file.

7. I currently handle numerous complex business litigation matters and have substantive experience in class action litigation. Additionally, I have prior experience in construction defect litigation, consumer fraud, and unfair business practices litigation. My regular hourly rate that I charge for class action litigation work is \$475 per hour. In many cases, my hourly rate has exceeded this amount.

8. The objection filed on behalf of my clients has resulted in a constructive enhancement to the settlement of this matter. My clients' objections resulted in denial of the *Edleson* matter which forced the settling parties to provide additional benefits to class members in the settlement approved by this Court.

9. On or about May 27, 2009, I met with counsel for the settling parties at their request to discuss possible resolution of objections. At that meeting, I, along with other objectors' counsel, made several suggestions as to how the proposed settlement could be improved to benefit class members. Several of the suggestions offered at the May, 2009 meeting were ultimately adopted by the settling parties in seeking approval of the *Faught* settlement.

10. Objectors provided an adversarial and critical context in which to evaluate the settlement, thereby effecting additional changes including the denial of an unqualified award of compensatory damages to lead plaintiffs. These enhancements will result in an increase in the value of the fund available to injured class members.

This declaration has been signed under penalty of perjury under the laws of the United States of America. It was executed on the 11th day of May, 2010 in the County of San Diego, California.

/s/ John W. Davis.
John W. Davis

Exhibit A

FEES

<u>Date</u>	<u>Description</u>	<u>Hours</u>
2/16/09	Conference with client re home warranty and pending settlement	.6
2/17/09	Review file at courthouse including notice to class members and settlement agreement	1
2/17/09	Prepare declaration affirming client's membership in the class	.3
2/23/09	Conference with client re terms of settlement agreement; prepare correspondence to real estate agent concerning facts surrounding transaction and closing costs	.7
3/4/09	Conduct preliminary investigation concerning record and attendant facts; begin preparing objection to proposed settlement	3
3/4/09	Conference with client re objections to settlement	.2
3/5/09	Research California law concerning injunctive relief and attorneys' fees in the class action context; begin preparing objection to proposed settlement	5
3/25/09	Finalize and serve objection to settlement and declaration of Miriam Chapon	6.7
4/9/09	Receive and review conformed copies of objection and declaration of Miriam Chapon	.2
4/15/09	Conference with co-counsel re appearance at fairness hearing	.2
4/21/09	Conference with objectors' counsel re objectors' claims and potential mediation; prepare correspondence re same	.9
4/21/09	Conference with clerk re continuance of hearing	.1
4/21/09	Conference with co-counsel re continuance and settlement strategy	.3
4/29/09	Receive and review correspondence re proposed mediation; conference with client and co-counsel re same	.6
4/29/09	Receive and review declaration of Yuri Yanishevski; review Declaration of Lynn Schroeder; review Declaration of Judge Harold Weiner; Review Notice of Lodgment in Support of Final Approval; review Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Settlement	1.8
4/30/09	Receive and review correspondence from objectors' counsel concerning proposed mediation; prepare correspondence re same	.3
5/1/09	Receive and review correspondence from objectors' counsel re proposed settlement enhancements; conference with co-counsel and client re same	.5

5/4/09	Telephone conference with dept. 73 clerk re recusal of judge and reassignment of case; prepare correspondence to co-counsel re reassignment	.2
5/19/09	Receive and review correspondence from objectors' counsel regarding potential mediation; prepare correspondence re same; conference with client re same	.7
5/20/09	Receive and review correspondence concerning settlement conference; telephone conference with Ben Nutley re same	.3
5/21/09	Receive and review correspondence concerning meeting with David Noonan; prepare conference re same	.4
5/21/09	Receive and review correspondence from objectors' counsel re settlement negotiation	.1
5/21/09	Conference with co-counsel and client re concerns about settlement and preparation for settlement meeting	.2
5/22/09	Receive and review correspondence from objector's counsel re settlement meeting	.1
5/27/09	Settlement conference with David Noonan, Joel Feldman, and objectors' counsel	1
6/2/09	Conference with defense counsel re proposed modifications to class settlement agreement; conference with objectors' counsel re same	1.3
6/3/09	Receive and review Order on Ex Parte Application to Set Hearing Date for (1) Final Approval of Class Action Settlement; and (2) Approval of Pro Hac Vice Applications	.1
6/11/09	Conference with objectors' counsel re mediation proposal; research San Diego mediators	.6
6/12/09	Telephone conference with Kathy Wynn re ex parte appearance to move date of fairness hearing; conference with co-counsel re same	.2
6/12/09	Receive and review correspondence re Defendant's mediation proposal; prepare correspondence re same	.3
6/15/09	Receive and review correspondence re availability of counsel for mediation	.1
5/30/09	Conference with objectors' counsel re AHS proposal	.5
7/1/09	Receive and review Response to Objections to and Motion to Strike or Exclude Evidence and Argument Submitted on Final Approval; Review file in preparation for oral argument concerning final approval of class settlement; review tentative ruling re same	1.9
7/2/09	Travel to and attend fairness hearing in San Diego Superior Court; conference with counsel re evaluation of settlement	1.8

7/10/09	Conference with clerk of the court re minute order following hearing on final approval	.2
7/10/09	Receive and review order denying final approval of class action settlement	.1
7/10/09	Telephone conferences with Ben Nutley and Paul Rothstein re denial of final approval and efficacy of mediation to improve settlement for re-submission to court	.5
8/10/09	Conference with objectors' counsel re motion to intervene and motion to disqualify class counsel	.4
1/6/10	Conference with local counsel concerning Alabama litigation; review local rules concerning admission pro hac vice	.3
2/2/10	Conference with U.S. District Court Clerk regarding statement of good standing; conference with local counsel regarding litigation strategy and appearance pro hac vice	.9
2/4/10	Telephone conference with local counsel regarding objection in Northern District of Alabama and admission pro hac vice	.6
2/5/10	Prepare objection to Faught settlement and motion for admission pro hac vice	6.8
2/6/10	Edit objection to settlement; conference with co-counsel re same	4.5
2/8/10	Finalize objection to settlement; prepare motion for admission pro hac vice; file and serve same	3.4
2/10/10	Research 11 th Circuit Precedent regarding objector's standing to appeal; conference with clerk re motion to appear pro hac vice; conference with co-counsel regarding case strategy	2
2/12/10	Receive and review correspondence from district court re motion to appear pro hac vice	.1
2/16/10	Receive and review correspondence from court re ECF registration; prepare correspondence re same	.4
2/16/10	Prepare, file, and serve objectors' motion to intervene	6.5
2/17/10	Receive and review order granting preliminary approval and plaintiffs' motion for attorneys' fees and incentive awards; conference with client re same	2.7
2/19/10	Receive and review orders granting motions to intervene of Miriam and John Chapon, and Charles Thompson	.2
2/22/10	Receive and review Notice of Completion of Class Notice and Geelan declaration re same	.2
2/26/10	Receive and review plaintiff's brief in support of settlement; review evidentiary submissions re same; review federal case law regarding hearsay and evidentiary requirements	1.5

3/1/10	Receive and review brief of American Home Shield in support of final approval of class action settlement; review declarations filed in support of same	2.4
3/1/10	Receive and review Williams supplemental objections	.2
3/2/10	Review parties' evidentiary submissions; review federal law re admissibility of same; prepare, file, and serve objections to evidence	1
3/8/10	Receive and review amicus brief of Texas attorney general and attached exhibits	1.5
3/8/10	Conference with local counsel re appearance at fairness hearing and possibility of mediation; conference with AHS counsel John Goodman re objections to settlement	.5
3/9/10	Receive and review supplemental filings concerning proposed settlement including status report re proposed injunctive relief and amended declaration of Mr. Vail	.9
3/10/10	Attend hearing in Northern District of Alabama concerning final approval of class action settlement; travel and preparation time	18
3/12/10	Receive and review minutes from District Court; conference with objectors' counsel regarding further briefing as requested by the court	.4
3/17/10	Receive and review letter brief from Texas AG concerning conflict and ethical issues; conference with objectors' counsel re same	.3
3/17/10	Receive and review Defendant's brief in opposition to abstention w/ exhibits	.7
3/24/10	Receive and review responsive brief and evidentiary submission of class counsel in reply to Texas AG's claims of conflict of interest; conference with objectors' counsel re evidentiary submissions	.8
3/24/10	Receive and review defendant's motion to continue injunction against California class litigation	.3
3/30/10	Receive and review proposed final order	.5
3/30/10	Receive and review correspondence from district court re record for interlocutory appeal	.1
4/12/10	Receive and review notice of transcript and redaction request deadline from District Court	.1
4/13/10	Receive and review correspondence from court reporter re preparation of transcript; prepare correspondence re same	.6
4/20/10	Conference with objector's counsel re Texas litigation	.3
4/20/10	Brief in Opposition to American Home Shield Corp.'s Motion for Continuation and Modification	.6
4/28/10	Receive and review Memorandum Opinion re substantive settlement, Final Judgment Granting Final Approval of the Class Action Settlement Agreement	1.8

Between the Class and Defendant American Home
Shield Corporation, and Memorandum Opinion re
attorneys' fees and incentive awards; conference with
clients re same

Total	94.5
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EXPENSES

<u>Date</u>	<u>Description</u>	<u>Cost</u>
2/8/10	Postage	3.62
2/8/10	FedEx	47.00
2/8/10	Pro hac vice filing fee	50.00
2/15/10	Airfare to Birmingham	380.80
3/9/10	Hotel – Birmingham	377.20
3/9/10	Car Rental	126.95
4/29/10	Transcript	153.00
Total		1138.57